

MEMORANDUM

TO: Superintendents, Principals and Heads of School
FROM: Mark Oettinger, General Counsel
SUBJECT: (1) Educator Reporting Requirements (Child Abuse and Neglect; Vulnerable Adult Abuse, Neglect and Exploitation; and Educator Licensing); and (2) Access to Child and Adult Abuse Registries
DATE: July 23, 2013

This is my annual reminder of the duties of educators to report abuse and neglect of children and vulnerable adults, and to report educator misconduct and incompetence that could result in a sanction being imposed on an educator's licenses. I have also included information about gaining access, for the purposes of your hiring and volunteer-screening due diligence, to the Child Protection Registry that is maintained by the Department for Children and Families (DCF), and to the Vulnerable Adult Protection Registry that is maintained by the Department of Aging and Independent Living (DAIL). In addition, for the first time, I have expanded this memorandum to include a number of recommendations related to the hiring of substitute teachers, the screening of volunteers, and the checking of the past employment history of prospective employees, contractors and volunteers.

With respect to educator reporting requirements, there are essentially three categories: (1) reporting suspected abuse or neglect of children to DCF; (2) reporting suspected abuse, neglect or exploitation of vulnerable adults to DAIL; and (3) reporting educator misconduct or incompetence to the Secretary of Education for the purposes of initiating a licensing investigation. Each type of report is explained below. Please remember that some of the reportable conduct that falls within these categories may also permit or require that you take other steps, including but not limited to, an investigation of harassment under 16 V.S.A. § 565, or suspension or dismissal under 16 V.S.A. § 1752(c). While you certainly need to be fully versed in harassment investigations, and in employment-contract-based suspensions and dismissals of district employees, this memorandum is exclusively addressed to the three categories of educator reporting requirements that are specifically mentioned at the outset of this paragraph.

Reports of Child Abuse and Neglect

33 V.S.A. § 4913(a) requires abuse and neglect reporting by, among other professionals, psychologists, school teachers, nurses, school superintendents, school librarians, school principals, school guidance counselors, mental health professionals and social workers, and by any other individual who is regularly employed by a school district, or by an approved or recognized independent school, or who is contracted and paid by a school district, or by an approved or recognized independent school, to provide student services for five or more hours per week during the school year.

The specific statutory requirement is that any one of the above-enumerated professionals "who has reasonable cause to believe that any child has been abused or neglected shall report [to DCF] or cause a report to be made [to DCF] in accordance with the provisions of section 4914 of this title within 24 hours." 33 V.S.A. § 4913(a). Persons who are not mandatory reporters may report or cause a report to be made. 33 V.S.A. § 4913(c). Whether or not one is a mandatory reporter, a person who files such a report in good faith has immunity from any criminal or civil liability. 33 V.S.A. § 4913(d)(1). Failure of a mandatory reporter to report can result in prosecution and a fine of \$500.00. 33 V.S.A. § 4913(e)(1). "A person may not refuse to make a report....on the grounds that making the report would violate a privilege or disclose a confidential communication." 33 V.S.A. § 4913(g). It is worth noting that, in the past few years, there have been 3 instances of school administrators being criminally charged for failure to file DCF reports. This may or may not reflect a "trend," but suffice it to say, a few high-profile cases of child abuse over the past few years have drawn significant public and media attention to this subject.

As we have strongly recommended in the past, "reporters" should not delay in fulfilling their responsibilities under the above statutes. It is not the job of the reporter to conduct a thorough investigation, or to come to a conclusion that abuse or neglect occurred, or to weigh the consequences to the educator or the student of reporting. "Reasonable cause to believe that any child has been abused or neglected" does not mean that the reporter must be convinced that abuse or neglect occurred. Rather, the reporter need only suspect that abuse or neglect might have occurred. Any doubts that the employee may have should be resolved in favor of reporting the possible abuse or neglect. To report suspected abuse or neglect of a child, contact the DCF's Centralized Intake Unit at (800) 649-5285.

If you have any questions about the interpretation of the above laws, or whether a particular set of circumstances might fall within their ambit, please contact the DCF's Centralized Intake Unit at 1-800-649-5285. If you would like training on this subject for yourself, or for your faculty and staff, please contact the Chief of the Special Investigations Unit at DCF at (802) 241-2131.

Reports of Abuse, Neglect and Exploitation of Vulnerable Adults

There is an additional statutory requirement for reporting abuse, neglect or exploitation of "vulnerable adults." See 33 V.S.A. §§ 6901-6905. A "vulnerable adult" is a person over the age of 18 with some form of disability as described in § 6902(14). The report must be made within 48 hours of when the mandatory reporter "knows of or has received information of abuse, neglect or exploitation of a vulnerable adult or [when the mandatory reporter] has reason to suspect that any vulnerable adult has been abused, neglected or exploited." 33 V.S.A. § 6903(a). The report is to be made to the Commissioner of DAIL (the toll-free number is 1-800-564-1612; the regular number is 802-241-2345). Because high schools invariably serve students with disabilities over the age of 18, please keep this reporting requirement in mind as well.

Reports of Educator Misconduct to the Secretary of Education

Educator misconduct can have a devastating impact on students, their families, the school community, and the reputation of all educators and schools in general. 16 V.S.A. § 1699 states

that “an individual who has reasonable cause to believe a licensee has engaged in unprofessional conduct or is incompetent may, and a superintendent who has reasonable cause to believe a licensee has engaged in unprofessional conduct or is incompetent shall, submit a written report to the secretary concerning allegations of unprofessional conduct or incompetence about a licensee. A principal submitting a report of unprofessional conduct or incompetence shall submit it to the superintendent and may also submit it to the Secretary”. Causes for licensing action are listed in 16 V.S.A. § 1698(a) and include the following:

(1) Unprofessional conduct which means:

- (A) Grossly negligent conduct or greater, on or off duty, that places a student or students in meaningful physical or emotional jeopardy, or conduct that evidences moral unfitness to practice as an educator;
- (B) Conviction for a criminal offense in which the underlying circumstances, conduct, or behavior, by gross negligence or greater, places a student or students in meaningful physical or emotional jeopardy, or conviction of a crime that evidences moral unfitness to practice as an educator;
- (C) Conviction of grand larceny under 13 V.S.A. § 2501 or embezzlement as defined in subchapter 2 of chapter 57 of Title 13, provided charges were brought after July 1, 2006;
- (D) Conviction of a crime charged after July 1, 2006, which involves fraudulent misrepresentation, dishonesty, or deceit, including conviction for any of the following: 13 V.S.A. §§ 1101, 1102, 1103, 1104, 1106, 1107, 1108, 3006, or 3016, provided that conviction under 13 V.S.A. §§ 2002, 2502, 2561, 2575, 2582, and 2591, if the value or amount involved is \$500.00 or less, shall not be considered a conviction under this subdivision unless it is part of a larger pattern of dishonesty, deceit, or fraud;
- (E) A pattern of willful misconduct or a single egregious act of willful misconduct in violation of duties and obligations of the position;
- (F) Falsification, misrepresentation, or misstatement of material information provided in connection with the application for or renewal or reinstatement of a license or endorsement;
- (G) With respect to a superintendent, the failure to maintain the confidentiality and privileged status of information provided pursuant to subsection 1700(c) and subdivision 1708(f)(3) of this title; and

(2) Incompetence, which means the inability or incapacity to perform the duties and competencies required by the license.

Further guidance on conduct that may constitute unprofessional conduct can be found in Vermont Standards Board for Professional Educators (VSBPE) Rules 5500-5530, entitled the Code of Professional Ethics and Rules of Professional Conduct for Vermont Educators.

While it is understandable that administrators would want to investigate any allegations that fall within the categories of mandated reporting requirements, it is vital that you fulfill your legally-required reporting duties as soon as possible so that objective, trained investigators can become involved immediately. Not only does this protect children, but it also can protect educators and others in cases where false reports are made (which can be very damaging to educators, parents or others against whom false reports of abuse or misconduct are sometimes made). The sooner the information is reported, and appropriate investigations are commenced by personnel affiliated with law enforcement and/or DCF and/or AOE, the better the quality of the evidence will be. It also must be stressed that fulfilling one of the reporting requirements mentioned above does not fulfill all of them. For example, reporting to the Secretary of Education suspected sexual activity between a teacher and a minor student does not relieve you of reporting such allegations to DCF. In addition, in any case in which you believe that a crime has been committed, you can (and should) call law enforcement authorities immediately.

Access to Child and Adult Abuse Registries

The Agency of Education strongly advises school districts to run Child Protection Registry and Vulnerable Adult Protection Registry checks on *all* prospective school employees. Districts should also run checks for school contractors who may have unsupervised contact with school children. These registries, which are maintained by DCF and DAIL respectively, contain lists of persons who have been found to have engaged in behavior that might indicate that they should not have unsupervised contact with school children or vulnerable adults.

Just to clear up any potential misunderstanding, Vermont law requires that all prospective school employees be checked against both registries, in addition to undergoing a standard fingerprint-supported criminal record check. The legislature has corrected an earlier drafting error regarding the effective date for the requirement that superintendents and headmasters conduct registry checks under 16 V.S.A. § 255. At this time, such registry checks are required to be conducted on any person for whom a criminal record check is required under 16 V.S.A. § 255(a).

More information regarding the registries can be found at this Web link:

http://dcf.vermont.gov/child_protection_registry. Note that a person is not categorically barred from school employment if he or she appears on one or both of the registries; the registries are intended to provide information to prospective employers regarding a person's history of working with children and vulnerable adults. An online system is available to check both registries simultaneously. Information about subscribing to this service can be found at <http://www.ahsnet.ahs.state.vt.us/abc/SubscriberHome.cfm>.

Policy Recommendations for Hiring Substitute Teachers

Under VSBPE Rule 5381, local school boards are responsible for adopting policies regarding employment qualifications of substitute teachers. The only specific requirement in that rule, however, is that each policy require that the substitute teacher have graduated from high school. Obviously, much more rigorous hiring practices are indicated, especially given the risks involved.

We would like to emphasize the importance of exercising a high degree of due diligence in the hiring of substitute teachers. As a starting point, pursuant to 16 V.S.A. §§ 255 and 256, a fingerprint supported criminal record check is required for any person whom a superintendent or headmaster is prepared to recommend for employment. That process alone, however, may not turn up all of the information that would be critical to the hiring process, as a district would certainly want to decline to offer employment to a would-be substitute teacher who had engaged in known past conduct that, while not criminal, was inappropriate, and that may put future students at risk. To promote student safety, therefore, we strongly recommend that, in addition to criminal background checks, at a minimum, districts incorporate the following guidelines into their policies and practices for the hiring of substitute teachers:

Require candidates to list all previous employers on their job applications;

Contact, at a minimum, the candidate's two most recent employers for reference checks;

Conduct thorough background and reference checks. This includes contacting a candidate's recent employers, particularly a superintendent or a senior level administrator in the school district(s) where the candidate worked previously, to ensure that all relevant information is provided. Avoid references from friends and relatives;

Do not accept letters of reference as a substitute for telephone inquiries;

Inquire as to the applicant's eligibility for re-employment at the previous district(s), and ask why the applicant left the previous job(s); and

Use a checklist and keep documentation of your reference calls.

Availability of Online Criminal Record Checks

As an addition tool for promoting student safety, we would like to bring to your attention an easy-to-use online criminal record service which is available for your use. This service is known as the Vermont Criminal Conviction Record Internet Service (VCCRIS), is provided by the Vermont Criminal Information Center (VCIC), and allows users to obtain criminal conviction records from VCIC. Please visit the website at <https://secure.vermont.gov/DPS/criminalrecords>. VCCRIS allows educational institutions a means of immediately retrieving Vermont criminal conviction records online. Once you apply online for an account as an educational institution, the reports will be free of charge. To request a criminal conviction record, all you need is the name and date of birth of the person for whom you wish to make the request. A criminal conviction record will contain only crimes for which an individual has been convicted in a Vermont court. The report will include all felonies, misdemeanors, and motor vehicle convictions adjudicated in a court on or after 9/1/1995. The report will not include: motor vehicle violations adjudicated prior to 9/1/1995; cases that have been dismissed or referred to diversion; juvenile or family court cases; cases that have been sealed, pardoned, or expunged; and cases in which prosecution has been declined. The record will contain the date of conviction, county of jurisdiction, offense of conviction, level of conviction, and sentence. The record will not contain victim information, or any individual's personal identifying information other than the name and date of birth which the user is required to provide. For users registered

as an Educational Institution, an online criminal record check will also indicate whether the subject of the record check was convicted of an offense which is listed in 13 V.S.A. § 5401 (sex offender definition for registration purposes). It must be stressed that an online criminal record check does not replace the need for a fingerprint supported criminal record check, required by 16 V.S.A. § 255. The availability of this online instantaneous check is, however, very useful for pre-screening candidates for employment and for use in screening potential school volunteers. Further information can be found at: <https://secure.vermont.gov/DPS/criminalrecords/help.php>.

Note Regarding Checking Prior Employment References

The 2010 legislative session resulted in the passage of 21 V.S.A. § 306, prospectively prohibiting confidential separation agreements between school districts and former employees, when the reason for the separation was actions jeopardizing the safety of a child or vulnerable adult. That provision went into effect on June 3, 2010, and does not affect pre-existing confidential separation agreements. The 2010 legislative session also resulted in the passage of 21 V.S.A. § 307, which would have required school districts to check with all of the current and past employers of a prospective employee over the past 10 years. 21 V.S.A. § 307 was to have gone into effect on April 1, 2011. Due to concerns expressed by education administrators, during the 2011 legislative session, the “10-year look back” provision in 21 V.S.A. § 307, was repealed. In addition, the 2011 legislative session added 21 V.S.A. § 308, granting civil immunity to current and past employers who, in good faith, voluntarily disclose such information.

Cautionary Note

The reader is cautioned that the various legal requirements of the law that are discussed in this memorandum are subject to change. Therefore, if you are using a hard copy version of this memorandum, you should check the AOE website to ensure that you have the latest version.

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